

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 EXOBOX TECHNOLOGIES CORP.,

5 Plaintiff,

6 vs.

7 ZACHARY TSAMBIS, *et al.*,

8 Defendants.

2:14-cv-00501-RFB-VCF

**REPORT AND RECOMMENDATION FOR
DISMISSAL OF COMPLAINT**

9 Before the Court is *Exobox Technologies Corp. v. Zachary Tsambis, et al.*, case number 2:14-cv-
10 00501-RFB-VCF.

11 On November 14, 2017, the court held a hearing on the motion to withdraw as counsel for Plaintiff.
12 (ECF No. 300). Shaun Irvine, CEO of Exobox Technologies Corp. and sole director, was ordered to
13 appear in person at the hearing; yet, he failed to appear. (ECF Nos. 288 and 300). At the conclusion of
14 the November 14th hearing, the court ordered:

- 15 1. Plaintiff's Counsel's Motion to Withdraw is GRANTED, and,
16 2. Mr. Takos will have until 11/21/17 to file notice with this court that party members
17 to this action are noticed that a pretrial conference is set for 11/28/17 at 3:00 p.m.

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19 The Court has clear authority to dismiss the case for failure to cooperate in the progress of the
20 litigation. "This power is necessary to prevent undue delays in the disposition of pending cases, docket
21 congestion, and the possibility of harassment of the Defendant." *Mederios v. United States*, 621 F.2d 468,
22 470 (1st Cir. 1980). To be sure, "[all litigants, including *pro ses*, have an obligation to comply with court
23 orders." *Minotti v. Lensink*, 895 F.2d 100, 103 (2d Cir. 1990)(per curiam). Thus, when they flout the
24 obligation to comply with court orders they, like all litigants, must suffer the consequences of their non-
25 compliance. *See McDonald v. Miegel*, 850 F.2d 121, 124 (2d Cir. 1988). Further, the Court need not

1 always exhaust every sanction short of dismissal before final action. *Edelson v. Commissioner*, 829 F.2d
2 828, 831 (9th Cir. 1987). Such a decision lies within the discretion of this Court. *See National Hockey*
3 *League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 642 (1976); *Link v. Wabash R. Co.*, 370 U.S.
4 628 (1962) (affirming district court's dismissal under Rule 41(b) after plaintiff's attorney failed to appear
5 at a pretrial conference).

6 At the November 14th hearing, counsel for Exobox Technologies Corp., Zachary Takos, clearly
7 established that Mr. Irvine had notice of this Court's order and chose not to comply. (ECF No. 300). The
8 court finds that Mr. Irvine's failure to appear at the November 14th hearing was a failure to comply with
9 a court order, such that this case should be dismissed.

10 Accordingly, IT IS RECOMMENDED, that Plaintiff's Complaint be dismissed for failure to obey
11 the court's order and that Judgment be entered on all claims in favor of Defendants.

12 The Clerk of Court is directed to mail a copy of this order to the following address:

13
14 Exobox Technologies Corp.
15 c/o Shaun Irvine
1770 Ximeno Ave., #104
Long Beach, CA 90815

16 NOTICE

17 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
18 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
19 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
20 may determine that an appeal has been waived due to the failure to file objections within the specified
21 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections
22 within the specified time and (2) failure to properly address and brief the objectionable issues waives the
23 right to appeal the District Court's order and/or appeal factual issues from the order of the District Court.
24 *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452,
25 454 (9th Cir. 1983).

1 Pursuant to Local Special Rule 2-2, the Plaintiff must immediately file written notification with
2 the court of any change of address. The notification must include proof of service upon each opposing
3 party of the party's attorney. Failure to comply with this Rule may result in dismissal of the action. *See*
4 LSR 2-2.

5 DATED this 14th day of November, 2017.

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9 CAM FERENBACH
10 UNITED STATES MAGISTRATE JUDGE
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